

FELIX CORIA-LUVIANO
Claimant

KROY INDUSTRIES

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY

Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

- (1) What is the nature and extent of claimant's injury and/or disability?

- (2) Is claimant entitled to temporary partial disability compensation?
- (3) Is claimant entitled to temporary total disability compensation and, if so, during what dates?
- (4) Is claimant entitled to future medical treatment and the right to review and modification?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law that are both accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Appeals Board adopts the findings of the Administrative Law Judge as its own, as if specifically set forth herein.

The Appeals Board finds persuasive the opinions of board certified family practitioner A. P. Ramchandani, M.D., and orthopedic surgeon Gary Michael Kramer, M.D., who both found claimant to be a symptom-magnifier. Dr. Kramer and Dr. Ramchandani performed numerous tests on claimant and ordered CT scans, x-rays and MRIs, all of which were normal. In addition, Dr. Kramer performed a Hoover test on claimant, which is a test for symptom magnification, which came back positive. The functional capacity evaluation ordered by Dr. Kramer was invalid due to claimant's attempts to manipulate the data. Even C. Reiff Brown, M.D., claimant's hired expert, noted claimant exhibited exaggerated behavior during his examination. Based upon these tests, the examinations performed and the overall lack of objective findings, both Dr. Ramchandani and Dr. Kramer found claimant to have suffered no permanent functional impairment as a result of the April 3, 1998, accident.

Claimant also requested temporary partial disability benefits. During the time claimant was returned to work after May 15, 1998, claimant was able to work eight hours a day, 40 hours per week. However, the record shows claimant regularly was late to work, left work early and sometimes failed to appear at all. The Administrative Law Judge refused to order temporary partial disability benefits, finding there was no way with claimant's poor attendance record to compute claimant's entitlement to any temporary partial disability during the time he was on light duty. The Appeals Board agrees.

Temporary total disability compensation was awarded from April 23, 1998, through May 15, 1998. The record shows claimant was taken off work after April 22, 1998, and

returned to light duty by Dr. Kramer on May 15, 1998. As claimant was restricted from working during that period of time, he is entitled to temporary total disability compensation.

Claimant requests future medical treatment be ordered. However, as it has been found that claimant suffered no permanent disability as a result of this injury, future medical treatment should be denied.

In his application to the Appeals Board, claimant lists entitlement to review and modification of this order as an issue. However, claimant's entitlement to review and modification was not listed as an issue before the Administrative Law Judge at regular hearing and was not argued in claimant's submission letters to the Administrative Law Judge or to the Board. K.S.A. 1997 Supp. 44-555c requires review by the Board upon questions of law and fact as presented to the Administrative Law Judge. Pursuant to K.S.A. 1997 Supp. 44-555c, claimant's entitlement to review and modification of this order is not properly before the Board, not having been presented to the Administrative Law Judge. This does not affect claimant's right to file for review and modification at some time in the future pursuant to K.S.A. 44-528.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Pamela J. Fuller dated September 13, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Shirla McQueen, Liberal, KS

Richard J. Liby, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director